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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/708,997	04/06/2004	Krzysztof Stanuszek	SAUP101US	2996
24041	7590	12/15/2004	EXAMINER	
SIMPSON & SIMPSON, PLLC 5555 MAIN STREET WILLIAMSVILLE, NY 14221-5406				PRICE, RICHARD THOMAS JR
ART UNIT		PAPER NUMBER		
		3643		

DATE MAILED: 12/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/708,997	STANUSZEK, KRZYSZTOF
<b>Examiner</b>	<b>Art Unit</b>	
Thomas Price	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1)  Responsive to communication(s) filed on 7-19-2004 and 4-6-2004.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4)  Claim(s) 1-18 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-18 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 7-19-2004.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_ .

## DETAILED ACTION

### ***Information Disclosure Statement***

The information disclosure statement (IDS) submitted on 7-19-2004 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner. A copy of the PTO-1449 is attached herewith.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2 and 5-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Way U.S. Patent 393,195. Way teaches an ice shaving machine which is structurally similar to the Applicant's claimed device. The apparatus of Way includes a horn means having horn inlet and a horn outlet and a piston means d. The piston means is adapted to pass at least within the horn means from the horn inlet to the horn outlet. As seen in Figure 1, the horn inlet and horn outlet have substantially similar diameters and the piston means is capable of sliding therebetween. As for claim 5, the handle of Way is a two-part handle d1 and d2 as seen in Figure 1. The handle includes a means for releasably pivotally securing (unnumbered) to said horn means. Regarding claims 6 and 7, a first part d1 or d2 and a second part d2 or d1 respectively of said two part handle are adapted for releasable complementary mate with one another such that said first part

may be locked to said second part. Further, a pivot(unnumbered) is considered to be a means for releasably pivotally securing said handle to said horn means. In regards to claim 9, elements A and/or B are considered mounting emans for elevating said horn above a work surface. As seen in Figure 1, said horn means is arcuate-like in shape.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 4 and 11-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Way U.S. Patent 393, 195 in view of Kather U.S. Patent 999,311. Way does not teach a retaining collar attached to a horn outlet. Kather teaches a sausage making machine which is structurally similar to the Applicant's claimed device. The apparatus includes a retaining collar E attached to the horn outlet. Regarding claims 3 and 4, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the horn outlet of Way with a retaining collar, in view of the teachings of Kather, in order assist the user in cleaning the horn outlet and to direct the material exiting the horn outlet. Regarding claims 11 and 18, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the apparatus of Way with a retaining collar and tube, in view of the teachings of Kather, in order to assist the user in cleaning the horn outlet and to direct the material

exiting the horn outlet. Further, the retaining collar and tube have an inlet of similar diameter to that of the horn outlet. As for claims 12-17, see the above mentioned discussion of the reference to Way.

***Prior Art of Record***

The cited prior art of record teaches ice, fruit or vegetable processors that are structurally similar to the Applicant's claimed device.

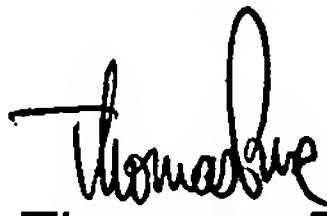
***Conclusion***

Summary: Claims 1-18 are rejected.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas Price whose telephone number is 703-308-2694. The examiner can normally be reached on Monday through Friday from 8:30a.m. to 5:00p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Thomas \_ Price  
Primary Examiner GAU: 3643

rtp